

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AUDREY JEAN WOLFORD,

Petitioner,

v.

HOWARD C. BARRON,

Respondent.

Case No. C23-1689-MJP-MLP

REPORT AND RECOMMENDATION

I. INTRODUCTION

Petitioner Audrey Wolford is a federal prisoner who is currently confined at the Federal Detention Center in SeaTac, Washington (“FDC SeaTac”). She has presented to this Court for consideration a petition for writ of habeas corpus under 28 U.S.C. § 2241 in which she asserts that the Federal Bureau of Prisons (“BOP”) has failed to properly apply First Step Act (“FSA”) time credits to her sentence. (Dkt. # 6 at 3.) Respondent filed a response to the petition (dkt. # 9), and Petitioner filed a traverse to the response (dkt. # 13). The Court, having now reviewed the petition and all briefing of the parties, concludes that Petitioner’s petition for writ of habeas corpus and this action should be dismissed.

II. BACKGROUND

On September 26, 2022, Petitioner was sentenced in the District of Guam to a term of 120-months confinement following guilty pleas to charges of conspiracy to distribute 50 grams or more of methamphetamine hydrochloride and engaging in monetary transactions with proceeds of specified unlawful activity.¹ (*See* dkt. # 10 at ¶ 3, Ex. 1.) The sentencing court also imposed a five-year term of supervised release to be served upon Petitioner's release from her term of imprisonment. (*See id.*, Ex. 1.) Following her sentencing, Petitioner was remanded to the custody of the United States Marshals Service ("USMS"). (*See id.* at ¶ 3, Ex. 1.)

On October 7, 2022, Petitioner was admitted to an in-transit facility where she stayed until December 2, 2022. (*See* dkt. # 10 at ¶ 4, Ex. 2.) Petitioner was then transferred to the Federal Detention Center in Honolulu, Hawaii ("FDC Honolulu") where she was temporarily housed in "holdover" status. (*See id.*) On June 29, 2023, Petitioner was transferred out of FDC Honolulu and admitted to another in-transit facility, and on July 19, 2023, Petitioner arrived at FDC SeaTac, the facility designated by the BOP for Petitioner to serve her sentence. (*Id.* at ¶ 5, Ex. 2.) Petitioner began earning FSA time credits on the date she arrived at FDC SeaTac. (*See id.* at ¶ 6, Ex. 3.)

Petitioner submitted her original petition for writ of habeas corpus to this Court for filing in October 2023. (*See* dkt. # 1.) Though it was clear from the original petition that Petitioner was seeking to challenge the BOP's failure to apply to her sentence all FSA credits to which she believed she was entitled, the petition was not submitted on the form provided by the Court and did not supply all information required by the form. Thus, on December 5, 2023, the Court

¹ Although Petitioner was sentenced on September 26, 2022, her judgment was not signed and entered by the Court until the following day, September 27, 2022. (*See* dkt. # 10, Ex. 1.)

1 issued an Order declining to serve the original petition and granting Petitioner leave to file an
2 amended petition. (Dkt. # 4.)

3 Petitioner submitted an amended petition to the Court for review on December 26, 2023.
4 (Dkt. # 6.) Petitioner asserted therein that (1) her FSA credits are not being applied to her
5 sentence, and (2) she is entitled to a reduction in her sentence under 18 U.S.C. § 3582(c)(2). (*Id.*)
6 Petitioner's claim pertaining to her FSA credits, as asserted in her amended petition, is somewhat
7 vague. However, when viewed in conjunction with the information provided in her original
8 petition, the claim is properly construed as asserting that Petitioner is being improperly denied
9 FSA credits for the period of time between when she was sentenced and when she arrived at her
10 designated facility. (*See* dkt. ## 3-1, 6 at 3.) Petitioner requested in her amended petition that this
11 Court bifurcate the two issues raised therein and transfer the second issue to the sentencing court
12 for consideration. *See id.*

13 On January 8, 2024, the Court issued an Order directing service of the amended petition
14 on Respondent, and advised therein that Petitioner would be permitted to proceed here only on
15 her FSA claim. (Dkt. # 8.) Respondent filed a response to the amended petition on February 8,
16 2024, arguing that the petition should be either dismissed or denied. (Dkt. # 9.)

17 On March 13, 2024, Petitioner filed a traverse to Respondent's response. (Dkt. # 13.) In
18 addition to responding to Respondent's arguments, Petitioner also indicated that she had filed a
19 motion for reduction of sentence in the sentencing court under 18 U.S.C. § 3582(c)(2), and that
20 she anticipated the sentencing court would reduce her sentence from 120 months to 93 months.
21 (*Id.*) Respondent filed a reply to the traverse on March 14, 2024, in which he confirmed that the
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1 sentencing court issued an order reducing Petitioner's sentence to 93 months.² (*See* dkt. # 14 at
2 1.)

3 On April 9, 2024, Respondent, at the Court's direction, submitted an updated FSA Time
4 Credit Assessment and an updated BOP sentence computation for Petitioner. (Dkt. # 16.) The
5 updated FSA Time Credit Assessment shows that Petitioner is currently earning FSA credits at a
6 rate of 15 days per month and that as of March 30, 2024, Petitioner had earned a total of 90 days
7 of FSA credits that may be applied toward early release to supervision. (*Id.*, Ex. 6.) The updated
8 sentence computation projects Petitioner's release date, with currently earned FSA credits, as
9 March 13, 2027. (*Id.*, Ex. 7.)

10 III. DISCUSSION

11 Petitioner argues she is entitled to receive FSA time credits for the period between
12 September 26, 2022, the date she was sentenced in the District of Guam, and July 19, 2023, the
13 date she arrived at her designated BOP facility, *i.e.*, FDC SeaTac. (*See* dkt. ## 3-1, 6, 13.)
14 Respondent argues the Court should dismiss or deny the petition for three reasons: (1) the
15 petition is not ripe; (2) Petitioner has not exhausted her administrative remedies; and (3)
16 Petitioner has no statutory right to FSA credits prior to her arrival at FDC SeaTac. (Dkt. # 9 at 2.)
17 The Court need only address the first of Respondent's three arguments as the Court concludes
18 that the ripeness issue is dispositive of this case.

19 A. FSA Time Credits

20 Congress enacted the FSA on December 21, 2018. Pub. L. No. 115-391, 132 Stat. 5194.
21 The FSA called for the implementation of a "risk and needs assessment" system to evaluate
22 federal inmates' recidivism risk and included a directive to establish evidence-based recidivism
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² *See also United States v. Wolford*, No. 1:19-cr-00026 (D. Guam, filed June 19, 2019), dkt. # 114.

1 reduction programs. 18 U.S.C. § 3632(a)–(b). The FSA also established various incentives for
2 inmates to participate in its anti-recidivism programming. 18 U.S.C. § 3632(d). One such
3 incentive was the awarding of “time credits” to “be applied toward time in prerelease custody or
4 supervised release” upon eligible prisoners’ successful completion of anti-recidivism
5 programming.³ 18 U.S.C. § 3632(d)(4)(C). Eligible prisoners receive ten days of FSA time
6 credits for every thirty days of anti-recidivism programming they successfully complete. 18
7 U.S.C. § 3632(d)(4)(A)(i). If the BOP determines that a prisoner is at a “minimum” or “low” risk
8 of recidivating and the prisoner has not increased her risk of recidivism over two consecutive
9 risk assessments, then she earns an additional five days of time credits for every thirty days of
10 successfully completed programming. 18 U.S.C. § 3632(d)(4)(A)(ii).

11 The FSA prohibits inmates in certain circumstances from earning credits. As relevant
12 here, an inmate may not earn credits “during official detention prior to the date the prisoner’s
13 sentence commences under [18 U.S.C. §] 3585(a).” 18 U.S.C. § 3632(d)(4)(B)(ii). Section
14 3585(a) provides that “[a] sentence to a term of imprisonment commences on the date the
15 defendant is received in custody awaiting transportation to, or arrives voluntarily to commence
16 service of sentence at, the official detention facility at which the sentence is to be served.”

17 Where a sentencing court includes as a part of a prisoner’s sentence a requirement that
18 the prisoner be placed on a term of supervised release upon release from imprisonment, the FSA
19 limits to twelve months the amount of time credits that can be applied to early release to
20 supervision. 18 U.S.C. § 3624(g)(3).

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23 ³ Several classes of prisoners are precluded from earning time credits under the FSA, but Petitioner does
not appear to belong to any of them. *See* 18 U.S.C. § 3632(d)(4)(D).

B. Ripeness

Article III of the United States Constitution limits the jurisdiction of federal courts to “actual, ongoing cases or controversies.” *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477 (1990). One component of the Article III case-or-controversy requirement is the concept that a claim must be ripe for review. *Bova v. City of Medford*, 564 F.3d 1093, 1095–96 (9th Cir. 2009). “[R]ipeness addresses *when* litigation may occur.” *Lee v. Oregon*, 107 F.3d 1382, 1387 (9th Cir. 1997) (emphasis in original). “A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotation marks and citation omitted).

Several courts have addressed when claims of improperly denied time credits under the FSA are ripe for review. “Federal courts around the country read Section 3624(g)(1)(A) to mean that the BOP is permitted to apply time credits only once an inmate has earned enough that equal the remainder of her sentence.” *Adkins v. Engleman*, 2022 WL 14966123, at *2 (C.D. Cal. Sept. 8, 2022) (internal quotation marks, emphasis, and citation omitted), *report and recommendation adopted*, 2022 WL 15116425 (C.D. Cal. Oct. 24, 2022); *see also Lallave v. Martinez*, 609 F. Supp. 3d 164, 183 (E.D.N.Y. June 29, 2022) (“[S]ince Petitioner’s FSA credits do not equal the remainder of her sentence, it would be inappropriate for the court to direct the BOP to adjudicate the credits at this time.”); *Turner v. Heisner*, 2022 WL 2195348 at *3 (D. Ariz. May 16, 2022) (“FSA earned time credits can be applied toward prerelease custody or supervised release only when accumulated credits are equal to the remainder of the prison term.”), *report and recommendation adopted*, 2022 WL 2192212 (D. Ariz. June 17, 2022).

Courts have noted that this interpretation “has a common sense basis,” as FSA credits earned can be lost due to misconduct. *Adkins*, 2022 WL 14966123, at *2; *see also Milchin v.*

1 *Warden*, 2022 WL 1658836, at *3 (D. Conn. May 25, 2022) (citing 28 C.F.R. §§ 523.43, 541.3).
2 It has also been observed that “an inmate requesting application of [FSA time credits] before
3 such application would result in his immediate release would be essentially seeking an advisory
4 opinion from the court.” *Patrick v. Heckard*, 2024 WL 770631, at *4 (S.D.W.Va. Jan. 26, 2024)
5 (internal alterations and citation omitted), *report and recommendation adopted*, 2024 WL
6 767179 (S.D.W.Va. Feb. 22, 2024).

7 Petitioner does not assert in her petition that she is currently eligible for release and the
8 record before this Court makes clear that she is not. Because Petitioner is required to serve a term
9 of supervised release she may have, at most, 12 months of time credits applied toward early
10 release to supervision. As noted above, Petitioner is currently earning 15 days of time credits for
11 every 30 days of programming and she had earned a total of 90 credits as of March 30, 2024.
12 (Dkt. # 16, Exs. 6, 7.) Her current projected release date with credits earned to date is March 13,
13 2027. (*See id.*, Ex. 7.)

14 If Petitioner continues to earn credits at the current rate, *i.e.*, 15 days for every 30 days in
15 custody, she will have accrued the statutory maximum number of credits that may be applied to
16 her sentence, *i.e.*, 365 days, in approximately 18 months, or the fall of 2025. Petitioner’s current
17 projected release date via good conduct time alone is June 11, 2027. (*Id.*) Assuming Petitioner
18 earns all available good time credits and FSA time credits, her earliest potential release date is
19 mid-June 2026, over two years from now.⁴ Should Petitioner lose credits during the time
20 remaining on her sentence, this could extend her release date beyond what is currently

21 ⁴ Put another way, if the Court were to reach the merits of Petitioner’s claim, and determine that she is
22 entitled to FSA credits for the period she claims she should have received them, *i.e.*, September 26, 2022
23 to July 19, 2023, this would advance the date on which she reaches the statutory maximum number of 365
days of accrued credit, but it would not entitle her to earlier release as she will only be entitled to
application of those credits once she is within twelve months of her currently projected good conduct time
release date of June 11, 2027.

1 anticipated. Because Petitioner is not yet entitled to have FSA time credits applied to her
2 sentence given that her earliest possible release date is still far in the future, this Court concludes
3 the issue raised by Petitioner is not ripe for adjudication.

4 IV. CONCLUSION

5 Based on the foregoing, this Court recommends that Petitioner's amended federal habeas
6 petition (dkt. # 6) and this action be DISMISSED. A proposed Order accompanies this Report
7 and Recommendation.

8 Objections to this Report and Recommendation, if any, should be filed with the Clerk and
9 served upon all parties to this suit within **twenty-one (21) days** of the date on which this Report
10 and Recommendation is signed. Failure to file objections within the specified time may affect
11 your right to appeal. Objections should be noted for consideration on the District Judge's
12 motions calendar for the third Friday after they are filed. Responses to objections may be filed
13 within **fourteen (14) days** after service of objections. If no timely objections are filed, the matter
14 will be ready for consideration by the District Judge on **May 17, 2024**.

15 DATED this 24th day of April, 2024.

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18 MICHELLE L. PETERSON
19 United States Magistrate Judge
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